

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 707

RIN 1991-AA90

#### Workplace Substance Abuse Programs at DOE Sites; Random Alcohol Abuse Testing

**AGENCY:** Department of Energy (DOE).

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** DOE withdraws a proposed rule that would have amended substance abuse testing regulations applicable to contractor employees who are authorized to have access to DOE-owned, contractor-operated sites. The proposed rule would have provided for testing for alcohol abuse on a random basis. This rulemaking is no longer necessary because DOE has successfully implemented an employee assistance program that appears effectively to deal with the potential for alcohol abuse at which the proposed rule was aimed.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Weakley, Office of Contract and Resource Management (HR-53), Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20085, (202) 586-4156.

**SUPPLEMENTARY INFORMATION:** DOE began this rulemaking by publishing a notice of proposed rulemaking on July 22, 1992 (57 FR 32664). The contractor employees at whom the proposed regulations were aimed are authorized to have access to sites where DOE carries out programs under the Atomic Energy Act of 1954.

In response to the notice of proposed rulemaking, DOE received a variety of public comments. Some commenters maintained that the rule is overly broad in that it does not establish a nexus between job responsibilities and testing. Others opposed any form of random testing for alcohol, requesting that such testing be only for reasonable suspicion or probable cause, while some believed that the proposed regulatory rates set forth for random testing should be reviewed or revised. Some commenters

raised a general legal objection to the institution of alcohol tests, arguing that such tests were beyond the scope of the current case law regarding testing for illegal drugs, and they expressed concerns about the privacy implications of the proposed alcohol testing policy. One commenter was concerned that the proposed rule did not properly take into account the collective bargaining rights of union members. One commenter observed that the declaration of an impasse after a year of bargaining over implementation of the substance abuse program was too arbitrary.

Since DOE published the notice of proposed rulemaking and received public comments, DOE has successfully tried an alternative, non-regulatory approach to dealing with alcohol abuse that substantially avoids the concerns articulated by the commenters and appears adequately to deal with DOE's actual experience with the potential for alcohol abuse. In 1993, DOE established its Employee Assistance Program Referral Option (EAPRO). Since its inception, DOE has used EAPRO as a tool to encourage individuals with alcohol or drug abuse problems that also hold access authorizations (*i.e.*, security clearances) to seek and participate in rehabilitation programs while maintaining their access authorizations. EAPRO provides incentives for cleared individuals to seek professional assistance from qualified providers in dealing with alcohol and drug abuse problems.

On the basis of the foregoing, DOE concludes that it would be appropriate to withdraw the proposed rule at this time without prejudice to possible reconsideration of the matter should future circumstances warrant. Accordingly, the proposed revisions to 10 CFR Part 707, which were announced in a notice of proposed rulemaking in the July 22, 1992, **Federal Register** (57 FR 32664), are hereby withdrawn.

Issued in Washington, DC, on March 4, 1999.

**Mary Anne Sullivan,**

*General Counsel.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 99-AEA-05]

#### Proposed Amendment to Class E Airspace; Babylon, NY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Babylon, NY. The development of new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) and amendments to the Instrument Landing System (ILS) SIAP and the Non Directional Radio Beacon (NDB) SIAP at Republic Airport, Farmingdale, NY, has made this proposal necessary. Amendments to the controlled airspace extending upward from 700 feet Above Ground Level (AGL) are needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before April 9, 1999.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA-520, Docket No. 99-AEA-05, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA-7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, New York, 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA-520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA-520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553-4521.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking